

REMARKS

The Official Action of March 24, 2010, and the references cited therein have been carefully reviewed. The Applicant respectfully requests reconsideration of the application in view of the following remarks. Claims 23-35 have been canceled without prejudice and rewritten for presentation as new Claims 36-49 for convenience in entering this amendment. Support for this amendment is found in the Specification, e.g., page 2, line 15 to page 10, line 1, page 14, line 15 to page 19, line 11, and the claims of the application as filed.

Claims 36-49 are pending in the application.

1. Restriction Requirement

Under 35 U.S.C. 121 and 372, the Examiner previously required restriction among:

Group I, Claim(s) 23-34, drawn to compounds and compositions wherein the central X ring is triazole, and R1 is pyridine, quinoline or isoquinoline, R2 is defined in Claim 1, and R3 is group (A);

Group I, Claim(s) 23-34, drawn to compounds and compositions wherein the central X ring is triazole, and R1 is pyridine, quinoline or isoquinoline, R2 is defined in Claim 1, and R3 is group (B);.

Group III, Claim(s) 23-34, drawn to compounds and compositions, other than those of Group I and Group II;

Group IV, Claim(s) 35, drawn to pharmaceutical methods of using compounds and compositions of Group I;

Group V, Claim(s) 35, drawn to pharmaceutical methods of using compounds and compositions of Group II; and

Group VI, Claim(s) 35, drawn to pharmaceutical methods of using compounds and compositions of Group III.

Applicants affirm their election of Group I, Claim(s) 23-34, drawn to compounds and compositions wherein the central X ring is triazole, and R1 is pyridine, quinoline or isoquinoline, R2 is defined in Claim 1, and R3 is group (A).

Although Applicants respectfully submit that restriction should not be required, in the interest of compact prosecution, they have amended the claims to be directed to the elected invention. This election is being taken without prejudice to the filing of a divisional application directed to the non-elected subject matter. In accordance with the third sentence of 35 U.S.C. § 121, a patent issuing from the instant application should not be a reference against a divisional application filed before the issuance of such patent.

2. Rejection of Claims 23, 24, 25, 31 and 34 under 35 U.S.C. 102(b)

Claims 23, 24, 25, 31 and 34 stand rejected under 35 U.S.C. 102(b) as being anticipated by Eistert et al (Justus Liebigs Annalen der Chemie, 1970). Applicants respectfully traverse this rejection and submit that Eistert et al. does not disclose each and every element of the claimed invention. In particular, Eistert et al. discloses certain pyridyl triazole phenyl compounds. In contrast, the present claims as amended, do not possess a pyridyl triazole phenyl group. Accordingly, the rejection of Claims 23, 24, 25, 31 and 34 under 35 U.S.C. § 102(b) as being anticipated by Eistert et al. is untenable and should be withdrawn.

3. Rejection of Claims 23, 24, 25, 31 and 34 under 35 U.S.C. 102(b)

Claims 23, 24, 25, 31 and 34 stand rejected under 35 U.S.C. 102(b) as being anticipated by L'abbe et al (Bulletin des Societes Chimiques Bwlges, 1994). Applicants respectfully traverse this rejection and submit that L'abbe et al. does not disclose each and every element of the claimed invention. In particular, L'abbe et al. discloses certain pyridyl triazole phenyl compounds. In contrast, the present claims as amended, do not possess a pyridyl triazole phenyl group. Accordingly, the rejection of Claims 23, 24, 25, 31 and 34 under 35 U.S.C. § 102(b) as being anticipated by L'abbe et al. is untenable and should be withdrawn.

4. Rejection of Claims 23-25, 31, 32 and 34 under 35 U.S.C. 102(b) or 35 U.S.C. 103(a)

Claims 23-25, 31, 32 and 34 stand rejected under 35 U.S.C. 102(b) as being anticipated, or in the alternative, under 35 U.S.C. 103(a) as being obvious over Cossford et al (WO 2003/051315).

The Applicants respectfully traverse this rejection and provide the following comments. The Applicants respectfully assert that Cossford et al. does not disclose or suggest the claimed invention. Nor would Cossford et al. have motivated or enabled one skilled in the art to employ the subject compounds in accordance with the claimed invention. Cossford et al. would have taught away from the present invention. Moreover, in view of the state of the art, one skilled in the art would have been discouraged from the compounds of the claimed invention.

Cossford et al. discloses certain compounds which possess a pyridyl triazole phenyl group. The compounds of Cossford et al. are modulators of the mGluR5 receptor

In contrast, none of the compounds of the present claims do not possess a pyridyl triazole phenyl group. Accordingly, the compounds of the present claims are structurally distinct from the compounds of Cossford et al. Moreover, the present compounds are inhibitors of the mGluR1 receptor which are useful for e.g., certain neuroscience indications.

Applicants respectfully submit that there would have been no motivation nor guidance for one of ordinary skill in the art to have selected the compounds of Cossford et al. and then to have modified such compounds to prepare the instant compounds.

Accordingly, Applicants respectfully submit that the rejection of Claims 23-25, 31, 32 and 34 under 35 U.S.C. 102(b) as being anticipated, or in the alternative, under 35 U.S.C. 103(a) as being obvious over Cossford et al (WO 2003/051315) is untenable and should be withdrawn. In this regard, Applicants note that Cossford et al (WO 2003/051315) has matured into US Patent Nos. 7,105,548, 7,253,190, 7,371,767 and 7,569,592. In view of the foregoing amendments and remarks, Applicants respectfully submit that a rejection for obviousness-type double patenting would likewise be inappropriate.

Serial No.: 10/590,586

Case No.: BY0040P

Page: 9

Applicants respectfully contend that the application is allowable and a favorable response from the Examiner is earnestly solicited.

Respectfully submitted,

By /J. Eric Thies, Reg.# 35382/

J. Eric Thies

Reg. No. 35,382

Attorney for Applicant

MERCK

P.O. Box 2000

Rahway, New Jersey 07065-0907

(732) 594-3904

Date: June 24, 2010